

Title 13-B: MAINE NONPROFIT CORPORATION ACT

Chapter 7: DIRECTORS AND OFFICERS

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Maine Revised Statutes
Title 13-B: MAINE NONPROFIT CORPORATION ACT
Chapter 7: DIRECTORS AND OFFICERS

§701. BOARD OF DIRECTORS

The activities of a corporation must be managed by a board of directors. Directors need not be residents of this State or members of the corporation unless required by the articles of incorporation or the bylaws. The articles of incorporation or the bylaws may prescribe other qualifications for the directors. [1991, c. 85, (AMD).]

Boards of directors shall ensure that no employee of the corporation may be terminated for contacting a director or directors. Directors may not preclude contact between employees of the corporation and members of the board of directors. [1991, c. 85, (NEW).]

SECTION HISTORY

1977, c. 525, §13 (NEW). 1991, c. 85, (AMD).

§702. NUMBER AND ELECTION OF DIRECTORS

1. Number of directors fixed by bylaws. The number of directors of a corporation shall not be less than 3. Subject to such limitation, the number of directors or a maximum and minimum number of directors shall be fixed by the bylaws or articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. If the articles of incorporation or bylaws set a maximum and minimum number of directors, the number of directors may be increased or decreased by a resolution of the members, or by a resolution of the directors, if the articles authorize such a resolution. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

[1977, c. 525, §13 (NEW) .]

2. First board of directors named in articles of incorporation. The directors constituting the first board of directors shall either be named in the articles of incorporation or elected by the incorporators and shall hold office until the first annual meeting of members or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or by the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be for one year.

[1977, c. 525, §13 (NEW) .]

3. Directors divided into classes. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term to which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

[1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW).

§703. VACANCIES

1. Vacancies filled. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

[1977, c. 525, §13 (NEW) .]

2. Director to fill unexpired term of predecessor. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

[1977, c. 525, §13 (NEW) .]

3. Limited directorship. Unless otherwise provided by the articles of incorporation or the bylaws, the directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors.

[1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW).

§704. REMOVAL OF DIRECTORS

1. Removal for cause. At a special meeting of members called expressly for that purpose, the entire board of directors or any individual director may be removed, with or without cause, by a vote of the members as provided in this section.

[1977, c. 525, §13 (NEW) .]

2. Vote of 2/3 of membership required for removal. Subject to the limitation in subsection 4, if the corporation does not have a board of directors so classified that different classes of members elect different directors, such removal may be accomplished by the affirmative vote of 2/3 of the members entitled to vote for directors. The articles of incorporation may provide that such removal be accomplished by a lesser vote, but in no case by a vote of less than a majority of members voting on the proposed removal.

[1977, c. 525, §13 (NEW) .]

3. Articles of incorporation may provide removal by lesser vote. Subject to the limitation in subsection 4, if the directors are so classified that different classes of members elect different directors, a director may be removed only by the affirmative vote of 2/3 of the members of that class that elected the director. The articles of incorporation may provide that such removal may be accomplished by a lesser vote of the members of that class, but in no case by a vote of less than a majority of the members of that class voting on the proposed removal.

[2001, c. 550, Pt. C, §11 (AMD); 2001, c. 550, Pt. C, §29 (AFF) .]

4. All directors removed at meeting. If any or all directors are removed at such meeting of the members, new directors may be elected at the same meeting without express notice being given of such election.

[1977, c. 525, §13 (NEW) .]

5. Action in court for removal from office.

[2001, c. 550, Pt. C, §29 (AFF); 2001, c. 550, Pt. C, §12 (RP) .]

SECTION HISTORY

1977, c. 525, §13 (NEW). 1979, c. 127, §101 (AMD). 2001, c. 550, §§C11,12 (AMD). 2001, c. 550, §C29 (AFF).

§704-A. REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING

1. Removal. The Superior Court may remove any director of a corporation from office if the court finds that removal is in the best interest of the corporation and that:

A. The director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation; [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. Section 713-A has been violated; or [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

C. A final judgment has been entered finding that the director has violated a duty set forth in section 712 or sections 717 to 720. [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

2. Who may bring action. A petition for removal under subsection 1 may be filed by:

A. The corporation, if 2/3 of the directors then in office resolve that an individual director should be removed; [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. Two-thirds of the members entitled to vote for that director or a lesser number as provided in the articles of incorporation of the corporation for removal of a director pursuant to section 704; or [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

C. In the case of a public benefit corporation, the Attorney General. [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

3. Place of filing. The petition for removal under subsection 2 must be filed:

A. In the county where the corporation's principal office is located; [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. In the county where the corporation's registered office is located if the corporation has no principal office in this State; or [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

C. In the Superior Court of Kennebec County if the corporation has no principal office or registered office in this State. [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

4. Court action. The court that removes a director under this section may bar the director from serving on the board of directors for a period prescribed by the court.

[2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

5. Notice to Attorney General; Attorney General actions. If the members of a corporation or the Attorney General commences a proceeding under this section, the corporation is made a party defendant. If a public benefit corporation or its members commence a proceeding under subsection 1, the public benefit corporation shall give the Attorney General written notice of the proceeding.

[2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

SECTION HISTORY

2001, c. 550, §C13 (NEW). 2001, c. 550, §C29 (AFF).

§705. PLACE AND NOTICE OF DIRECTORS' MEETINGS

1. Purpose of meeting; business transacted not specified in notice. Meetings of the board of directors, regular or special, may be held either within or without this State, and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless the articles, the bylaws or this Act so requires.

[1977, c. 525, §13 (NEW) .]

2. Participation at meetings by conference telephone. Unless otherwise restricted by the certificate of incorporation or bylaws, members of the board of directors of any corporation, or any committee designated by such board, may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

[1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW).

§706. QUORUM AND VOTE OF DIRECTORS

1. Quorum fixed by bylaws. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws, but in no event shall a quorum consist of less than 1/5 of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this Act, the articles of incorporation or the bylaws.

[1977, c. 525, §13 (NEW) .]

2. Special meetings. Special meetings of the directors may be called by the chairman of the board, the president, or if he is absent or is unable to act, by any vice-president, by any 2 directors, or by any other person or persons authorized by the bylaws.

[1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW).

§707. UNANIMOUS ACTION BY DIRECTORS WITHOUT A MEETING

Unless otherwise provided by the articles of incorporation or bylaws, any action required by this Act to be taken at a meeting of the directors of a corporation, or any action which may be taken at a meeting of the directors or of a committee of the directors, may be taken without a meeting if all of the directors, or all of the members of the committee, as the case may be, sign written consents setting forth the action taken or to be taken, at any time before or after the intended effective date of such action. Such consents shall be filed with the minutes of directors' meetings or committee meetings, as the case may be, and shall have the same effect as a unanimous vote. [1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW).

§708. INFORMAL OR IRREGULAR ACTION BY DIRECTORS

1. Action taken without a meeting. Action taken without a meeting by agreement of a majority of directors, or by agreement of such larger percentage as the articles of incorporation or the bylaws may require, shall be deemed action of the board of directors:

A. If the corporation has no members and all directors know of the action taken and no director makes prompt objection to such action; [1977, c. 525, §13 (NEW) .]

B. If all members know of the action taken and no member makes prompt objection to such action; or [1977, c. 525, §13 (NEW) .]

C. If the directors take informal action pursuant to a custom of that corporation known generally to its members and all directors know of the action taken, and no director makes prompt objection thereto. [1977, c. 525, §13 (NEW) .]

[1977, c. 525, §13 (NEW) .]

2. Meeting ratified by a director. If a meeting otherwise valid of the board of directors or of any committee is held without call or notice where such is required, any action taken at such meeting shall be deemed ratified by a director or committee member who did not attend, unless, after learning of the action taken and of the impropriety of the meeting, he makes prompt objection thereto.

[1977, c. 525, §13 (NEW) .]

3. Objections in writing to secretary of corporation. Objection by a member, director or committee member shall be effective only if written objection to the holding of the meeting or to any specific action so taken is filed with the clerk or the secretary of the corporation.

[1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW).

§709. COMMITTEES

1. Executive committee. If the articles of incorporation or the bylaws so provide, the board of directors, by a resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee consisting of 2 or more directors, and may delegate to such executive committee all the authority of the board of directors, except that no such executive committee shall have or exercise the authority of the board of directors to:

- A. Amend the articles of incorporation; [1977, c. 525, §13 (NEW).]
- B. Adopt a plan of merger or consolidation; [1977, c. 525, §13 (NEW).]
- C. Recommend to the members the sale or other disposition of all or substantially all of the property and assets of the corporation other than in the usual course of its business; [1977, c. 525, §13 (NEW).]
- D. Recommend to the members voluntary dissolution of the corporation or revocation of such dissolution; or [1977, c. 525, §13 (NEW).]
- E. Amend the bylaws of the corporation. [1977, c. 525, §13 (NEW).]

[1981, c. 307, §1 (AMD) .]

1-A. Other committees. If the articles of incorporation or the bylaws so provide, the board of directors may designate such other committees as the board deems necessary, which committees may consist of either members of the board or other persons as designated in the bylaw or resolution authorizing that committee.

[1981, c. 307, §2 (NEW) .]

2. Designation to committee. The designation of any such committee and the delegation to it of authority shall not relieve the board of directors, or any member thereof, of any responsibility imposed by law.

[1977, c. 525, §13 (NEW) .]

3. Conduct of meetings. So far as applicable, the provision of this chapter relating to the conduct of meetings of the board of directors shall govern meetings of the executive or other committees.

[1977, c. 525, §13 (NEW) .]

4. Board of directors may appoint alternate. At the time an executive committee or any other committee is created, or at any time thereafter, the board of directors may designate one or more alternate members of such committee, and may specify their order of preference, provided that alternate members of an executive committee may be designated only from among members of the board of directors. Each such alternate member may attend all meetings of the committee, but shall be without vote unless one or more of the regularly designated members of such committee fails to attend a meeting. In the absence of one or more of the regular members of the committee, such alternate member or members may be counted toward a quorum and may vote as though they were regular members of the committee. In the event that there are more alternate committee members present than there are absent regular committee members, the alternate members shall have the right to vote in the order of preference specified by the directors in designating them or, if no order of preference was specified, in the order of their appointment or their listing in a single appointment.

[1981, c. 470, Pt. B, §3 (AMD) .]

SECTION HISTORY

1977, c. 525, §13 (NEW). 1981, c. 307, §§1-3 (AMD). 1981, c. 470, §B3 (AMD).

§710. OFFICERS

1. Officers elected or appointed. The officers of a corporation shall consist of a president, a secretary or clerk, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such term as may be prescribed in the articles of incorporation, in the bylaws or in a resolution of the board of directors. In the absence of such provision, all officers shall be elected or appointed annually by a board of directors. Any 2 or more offices may be held by the same person unless otherwise provided in the articles of incorporation or bylaws.

[1977, c. 525, §13 (NEW) .]

2. Authority to make contracts. Unless they have reason to believe otherwise, persons dealing with a corporation are entitled to assume that its president has authority to make, on its behalf, all contracts which are within the ordinary course of those activities in which the corporation is already engaged.

[1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW).

§711. REMOVAL OF OFFICERS

1. Removal. Any officer elected or appointed as provided in the articles of incorporation or bylaws may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed.

[1977, c. 525, §13 (NEW) .]

2. Contract rights not created by appointment. Election or appointment of an officer or agent shall not of itself create contract rights.

[1977, c. 525, §13 (NEW) .]

3. Vacancy. Any vacancy, however occurring, in any office may be filled by the directors, unless the articles of incorporation shall have specifically reserved such power to the members.

[1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW).

§712. LOANS TO DIRECTORS AND OFFICERS PROHIBITED

No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof. [1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW).

§713. TRANSACTIONS BETWEEN A CORPORATION AND ITS DIRECTORS AND OFFICERS

(REPEALED)

SECTION HISTORY

1977, c. 525, §13 (NEW). 1977, c. 592, §16 (AMD). 2001, c. 550, §C29 (AFF). 2001, c. 550, §C14 (RP).

§713-A. PUBLIC BENEFIT CORPORATION; BOARD

1. Financially interested person. For the purposes of this section, "financially interested person" means:

A. An individual who has received or is entitled to receive compensation from a public benefit corporation for personal services rendered to the corporation by that individual within the previous 12 months, whether as a full-time or part-time employee, independent contractor, consultant or otherwise, excluding any reasonable payments made to directors for serving as directors. An individual is considered to receive compensation for services rendered to a public benefit corporation by that individual if the individual is entitled to receive, other than as a shareholder of a publicly held corporation, a portion of the net income of a corporate or other business entity that provides, for compensation, personal services to that public benefit corporation; or [2001, c. 550, Pt. C, §15 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. A spouse, brother, sister, parent or child of the individual described in paragraph A. [2001, c. 550, Pt. C, §15 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[2001, c. 550, Pt. C, §15 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

2. Board. No more than 49% of the individuals on the board of directors of a public benefit corporation may be financially interested persons.

[2001, c. 550, Pt. C, §15 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

2-A. Compensation information. A public benefit corporation that receives at least 25% of its total funding from one or more municipal, county, state or federal sources shall provide to the public information about the total compensation paid by the corporation to any director or officer of the corporation if the compensation exceeds \$250,000 in any 12-month period. The corporation shall make the information available by posting the information on its publicly accessible website or through other comparable means. "Compensation" includes all remuneration and benefits.

[2007, c. 624, §1 (NEW) .]

3. Validity; enforceability. The failure to comply with this section does not affect the validity or enforceability of any transaction entered into by a corporation.

[2001, c. 550, Pt. C, §15 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

SECTION HISTORY

2001, c. 550, §C15 (NEW). 2001, c. 550, §C29 (AFF). 2007, c. 624, §1 (AMD).

§714. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS; INSURANCE

1. Power to indemnify. A corporation shall have power to indemnify, or if so provided in the bylaws shall in all cases indemnify, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding; provided that no indemnification shall be provided for any person with respect to any matter as to which he shall have been finally adjudicated in any action, suit or proceeding not to have acted in good faith in the reasonable belief that his action was in the best interests of the corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order or conviction adverse to such person, or by settlement or plea of nolo contendere or its equivalent, shall not of itself create a presumption that such person did not act in good faith in the reasonable belief that his action was in the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

[1977, c. 525, §13 (NEW) .]

2. Indemnity against expenses. Any provision of subsections 1 or 3 to the contrary notwithstanding, to the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsection 1, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith. The right to indemnification granted by this subsection may be enforced by a separate action against the corporation, if an order for indemnification is not entered by a court in the action, suit or proceeding wherein he was successful on the merits or otherwise.

[1977, c. 525, §13 (NEW) .]

3. Indemnity made by corporation. Any indemnification under subsection 1, unless ordered by a court or required by the bylaws, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsection 1. Such determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion. Such a determination, once made by the board of directors may not be revoked by the board of directors, and upon the making of such determination by the board of directors, the director, officer, employee or agent may enforce the indemnification against the corporation by a separate action notwithstanding any attempted or actual subsequent action by the board of directors.

[1981, c. 470, Pt. A, §31 (AMD) .]

4. Expenses incurred in civil or criminal action. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in the manner provided in subsection 3 upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

[1977, c. 525, §13 (NEW) .]

5. Provisions of indemnification. The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. A right to indemnification required by the bylaws may be enforced by a separate action against the corporation, if an order for indemnification has not been entered by a court in any action, suit or proceeding in respect to which indemnification is sought.

[1979, c. 541, Pt. A, §134 (AMD) .]

6. Power to purchase and maintain insurance. A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under this section.

[1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW). 1979, c. 541, §A134 (AMD). 1981, c. 470, §A31 (AMD) .

§715. BOOKS AND RECORDS

1. Books; records of accounts. Each corporation shall keep correct and complete books and records of accounts and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors and shall keep at its registered office or principal office in this State a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any officer, director or voting member or the officer's, director's or voting member's agent or attorney, for any proper purpose at any reasonable time, as long as the officer, director or voting member or the officer's, director's or voting member's agent or attorney gives the corporation written notice at least 5 business days before the date on which the officer, director or voting member or the officer's, director's or voting member's agent or attorney wishes to inspect and copy any books or records. The only proper purpose for which a voting member may inspect and copy books or records under this section is the purpose of enabling the member to fulfill duties and responsibilities conferred upon members by the articles of incorporation or the bylaws of the corporation or by law. The corporation may require the officer, director or member or the officer's, director's or member's agent or attorney to pay the reasonable cost of the copies made and may impose reasonable restrictions on the use or distribution of the records by such a person.

[2001, c. 550, Pt. C, §16 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

2. Refusal to allow inspection. If a corporation does not make available for inspection or copying the books and records required by subsection 1 or if the corporation seeks to impose unreasonable restrictions on the use or distribution of such books and records, the Superior Court in the county where the corporation's principal office is located or, if the corporation has no principal office in this State, in the county where its registered office is located may order inspection and copying of the records demanded at the corporation's expense upon application of the officer, director or member or the officer's, director's or member's agent or attorney.

A. If the court orders inspection and copying of the records demanded, the court shall also order the corporation to pay the costs of the officer, director or member or the officer's, director's or member's agent or attorney, including reasonable attorney's fees, incurred to obtain the order unless the corporation

proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the officer, director or member to inspect the records demanded. [2001, c. 550, Pt. C, §16 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding officer, director or member or the officer's, director's or member's agent or attorney. [2001, c. 550, Pt. C, §16 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[2001, c. 550, Pt. C, §16 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

SECTION HISTORY

1977, c. 525, §13 (NEW). 2001, c. 550, §C29 (AFF). 2001, c. 550, §C16 (RPR).

§716. DUTIES OF DIRECTORS AND OFFICERS

(REPEALED)

SECTION HISTORY

1981, c. 7, (NEW). 2001, c. 550, §C29 (AFF). 2001, c. 550, §C17 (RP).

§717. GENERAL STANDARDS FOR DIRECTORS

1. Discharge duties. A director shall discharge the director's duties:

A. In good faith; [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

C. In a manner the director reasonably believes to be in the best interests of the corporation. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

2. Rely on information. In discharging the director's duties, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

A. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented; [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. Legal counsel or a public accountant or other person as to matters the director reasonably believes are within the person's professional or expert competence; or [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

C. A committee of the board of directors of which the director is not a member, as to the matters within its jurisdiction, if the director reasonably believes the committee merits confidence. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

A director is not acting in good faith if the director relies on information, opinions, reports or statements that the director knows or has reason to believe are unwarranted.

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

3. Performance; compliance. A director is not liable for the performance of the duties of the director's office if the director acted in compliance with this section and, if a conflict-of-interest transaction is involved, the transaction was fair to the corporation or was approved pursuant to section 718.

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

4. Trustee. A director is not considered a trustee with respect to the director's corporation or with respect to any property held or administered by that corporation, including, without limitation, property that may be subject to restrictions imposed by the donor or transferor of the property.

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

SECTION HISTORY

2001, c. 550, §C18 (NEW). 2001, c. 550, §C29 (AFF).

§718. DIRECTOR OR OFFICER CONFLICT OF INTEREST

1. Conflict-of-interest transaction. A conflict-of-interest transaction is a transaction in which a director or officer of a corporation has a direct or indirect financial interest. For the purposes of this section, a director or officer has an indirect interest in a transaction if:

A. Another entity in which the director or officer has a material interest or in which the director or officer is a general partner is a party to the transaction; or [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. Another entity of which the director or officer is a director, officer or trustee is a party to the transaction. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

2. Transaction not voidable or grounds for liability. A conflict-of-interest transaction is not voidable or grounds for imposing liability on a director or officer of a corporation if the transaction was fair at the time it was entered into or is approved as provided in subsection 3 or 4.

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

3. Public benefit corporation; approval. A transaction in which a director or officer of a public benefit corporation has a conflict of interest may be approved before or after consummation of the transaction as follows.

A. The board of directors of a public benefit corporation or a committee of the board may authorize, approve or ratify a transaction under this section if the material facts of the transaction and the director's or officer's interest are disclosed or known to the board or committee of the board. The transaction may be approved only if it is fair and equitable to the corporation as of the date the transaction is authorized, approved or ratified. The party asserting fairness of any such transaction has the burden of establishing fairness. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

B. If the board of a public benefit corporation so requests, a transaction under this section may be approved by the Attorney General or by the Superior Court in an action in which the Attorney General is joined as a party. If the board is unable to make a decision regarding a transaction, one or more directors or officers may request approval of the Attorney General or the court in accordance with this subsection. The transaction may be approved only if it is fair and equitable to the corporation as of the date the

transaction is authorized, approved or ratified. The party asserting fairness of any such transaction has the burden of establishing fairness. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

4. Mutual benefit corporation; approval. A transaction in which a director or officer of a mutual benefit corporation has a conflict of interest may be approved by the directors or the members of the corporation before or after consummation of the transaction as follows.

A. The board of directors of a mutual benefit corporation or a committee of the board may authorize, approve or ratify a transaction under this section if the material facts of the transaction and the director's or officer's interest are disclosed or known to the board or committee of the board. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. The members of a mutual benefit corporation may authorize, approve or ratify a transaction under this section if in accordance with subsection 6 the material facts of the transaction and the director's or officer's interest are disclosed or known to the members. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

5. Approval by directors of public benefit or mutual benefit corporation. For purposes of subsections 3 and 4, a conflict-of-interest transaction is approved if it receives the affirmative vote of a majority of the directors on the board of directors of the corporation or on a committee of the board who have no direct or indirect interest in the transaction, but a transaction may not be approved under this subsection by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to approve the transaction, a quorum is present for the purpose of taking action under this section.

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

6. Approval by members of mutual benefit corporation. For purposes of subsection 4, paragraph B, a conflict-of-interest transaction is approved by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director or officer who has a direct or indirect interest in the transaction and votes cast by or voted under the control of an entity described in subsection 1, paragraph A may not be counted in a vote of members to determine whether to approve a conflict-of-interest transaction under subsection 4, paragraph B. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

7. Additional requirements. The articles of incorporation, the bylaws or a resolution of the board of directors of a corporation may impose additional requirements on conflict-of-interest transactions under this section.

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

8. Attorney General action to void transaction. If the Attorney General has reasonable grounds to believe that a public benefit corporation has engaged in a conflict-of-interest transaction and that the transaction was neither fair nor properly approved pursuant to the procedures and standards set forth in subsection 3 or 4, the Attorney General may bring an action in Superior Court in Kennebec County to void

the transaction. At least 10 days before bringing such an action, the Attorney General shall send written notice to the board of directors of the corporation of the intent to bring the action. The Attorney General may proceed without such notice if necessary to prevent immediate irreparable harm to the public.

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

9. Authority to fix compensation. Except to the extent that the articles of incorporation or bylaws otherwise provide, the board of directors of a corporation or the executive committee of the board of directors, without regard to this section, has authority to fix the compensation of directors for their services as directors or officers or in any other capacity.

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

SECTION HISTORY

2001, c. 550, §C18 (NEW). 2001, c. 550, §C29 (AFF).

§719. DUTIES AND AUTHORITY OF OFFICERS

Each officer is authorized to and shall perform the duties set forth in the bylaws. In addition, each officer, to the extent consistent with the bylaws, has the authority and shall perform the duties prescribed in a resolution of the board of directors of the corporation. The board may authorize an officer, pursuant to a resolution of the board and to the extent consistent with the bylaws, to prescribe the duties and authority of other officers. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

SECTION HISTORY

2001, c. 550, §C18 (NEW). 2001, c. 550, §C29 (AFF).

§720. GENERAL STANDARDS FOR OFFICERS

1. Discretionary authority. An officer of a corporation with discretionary authority shall discharge that officer's duties under that authority:

A. In good faith; [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

B. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

C. In a manner the officer reasonably believes to be in the best interests of the corporation and its members. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

2. Rely on information. In discharging the officer's duties, an officer of a corporation is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

A. One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

B. Legal counsel or a public accountant or other person as to matters the officer reasonably believes are within the person's professional or expert competence. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

An officer is not acting in good faith if the officer relies on information, opinions, reports or statements that the officer knows or has reason to believe are unwarranted.

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

3. Compliance. An officer of a corporation is not liable to a corporation, any member or other person for any action taken or not taken as an officer if the officer acted in compliance with this section and, if a conflict-of-interest transaction is involved, the transaction was fair to the corporation or was approved pursuant to section 718.

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

SECTION HISTORY

2001, c. 550, §C18 (NEW). 2001, c. 550, §C29 (AFF).

§721. MISAPPLICATION OF FUNDS OR ASSETS OF PUBLIC BENEFIT CORPORATION

1. Prohibited transaction. The funds or assets of a public benefit corporation may not be transferred or applied and a director or officer of a public benefit corporation may not authorize the transfer or application of funds or assets of the public benefit corporation if:

A. The transfer constitutes a conflict-of-interest transaction that is neither fair nor properly approved as determined under section 718; [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. The transfer misapplies the funds or assets in violation of statute, including conversion transactions in violation of Title 5, sections 194-C to 194-H; [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

C. The transfer is to a director or officer of the public benefit corporation or to another person in a position to exercise substantial influence over the affairs of the corporation and constitutes private inurement or excess benefits that exceed the fair market value of the property or services received in return; or [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

D. The transfer of funds or assets is to a subsidiary or joint venture organized as a for-profit entity, unless the board of the public benefit corporation determines in good faith under the facts and circumstances at the time of transfer or commitment to transfer that:

- (1) The organization and operations of the for-profit entity will serve, further or support a charitable purpose of the public benefit corporation;
- (2) The transfer or the commitment to transfer is fair to the public benefit corporation;
- (3) Distributions of net income by the for-profit entity to owners and investors will be proportionate to their investment interests; and
- (4) The articles of incorporation, bylaws or similar organizational documents require that compensation transactions between the for-profit entity and investors in the entity or directors or officers of the entity or others in a position to exercise substantial influence over the affairs of the entity be established in amounts that do not exceed the fair market value of services or property to be provided to the entity. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

2. Conversion transactions. If a transfer under this section constitutes a conversion transaction as defined in Title 5, section 194-B, subsection 2, the provisions of Title 5, sections 194-B to 194-K may apply and nothing in this section is intended to supersede those provisions applicable to such transactions.

[2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

SECTION HISTORY

2001, c. 550, §C18 (NEW). 2001, c. 550, §C29 (AFF).

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